

April 28, 2009



TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner, Vice President

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember George Leventhal

Councilmember Valerie Ervin

Councilmember Michael Knapp

Councilmember Duchy Trachtenberg



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1 JENNY CANNON:

2 Let us pray. Holy One, for the dedicated people who are gathered here today, we give you
3 thanks. For the good work that will be done and the hard decisions that will be made, we
4 ask for wisdom. For the voices that will not be heard, for those who are overlooked or too
5 often forgotten, we ask and pray for forgiveness. For all who are suffering in this
6 community or any other, we pray for mercy. May this day, this body, and the business at
7 hand give honor to you, O God. May it be the work of justice. May it lift up peace. May it
8 serve the common good. In all the holy names of God that we each bring and bear, we
9 offer this prayer. Amen.

10
11 COUNCIL PRESIDENT ANDREWS:

12 Thank you, Reverend Cannon. We're going to now have a presentation that is a
13 proclamation in recognition of Highland Elementary School, recipient of the National
14 Excellence in Urban Education Award, and Councilmember Valerie Ervin will do the
15 honors.

16
17 COUNCILMEMBER ERVIN:

18 Good morning. I would like to call up Ray Myrtle, the principal of Highland Elementary,
19 and Scott Steffan, the assistant principal. And I would really like to say thank you for that
20 wonderful invocation that we just heard, because it really does speak to the difficult
21 decisions that we're going to be making over the next four weeks, so I really appreciate
22 those thoughtful comments. I'm here to recognize and congratulate Highland Elementary
23 School. We in Montgomery County are very blessed to be one of the best and finest
24 school systems in the entire country. And knowing what goes into making a great school
25 even greater, the story about Highland Elementary School is one that really needs to be
26 shared. Highland Elementary School has a remarkable turnaround story. In 2004 and
27 2005, Highland was identified for corrective action by the Maryland State Department of
28 Education for missing adequate yearly progress targets on the Maryland School
29 Assessment for four consecutive years. That's not good news. Just two years later,
30 Highland Elementary School exited MSDE School Improvement status after achieving
31 adequate yearly
32 progress for--how many consecutive years after that? It's been two consecutive years.
33 This school is remarkable because it has a poverty rate of 81.6%, one of the highest
34 poverty rates in all of Montgomery County public schools. And to put this in proper
35 context, the amount of income that a family of four must have to qualify for free and
36 reduced meals is \$39,220. So almost 87% of all the families in this school qualify because
37 they make less than \$40,000 a
38 year. In addition, approximately 60% of Highland students participate in the English for
39 Speakers of Other Languages program. So those students have excelled, and school test
40 scores have consistently risen as a result of this very dedicated and talented staff of

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1 teachers and administrators. And so, today we are so honored and proud of Highland
2 Elementary School, and so we going to be offering this proclamation, which I will read,
3 which talks about the award that was received by this school. "Whereas, the National
4 Center for Urban School Transformation's mission is to help urban school districts and
5 their partners transform urban schools into places where all students achieve academic
6 proficiency, evidence a love of learning, and graduate well- prepared to succeed in post-
7 secondary education, the workplace, and their communities; and whereas, Highland
8 Elementary School is one of the 11 schools in the country to receive the prestigious 2009
9 National Excellence in Urban Education award this year from the National Center for
10 Urban School Transformation; and whereas, winning schools must meet rigorous criteria
11 including proficiency rates on state assessments that exceeded state averages, high
12 achievement for all of the demographic groups served, high graduation rates, as well as
13 other academic and non-academic success; and whereas, the National Excellence in
14 Urban Education award celebrates the success that occurs when teachers, staff, students,
15 parents, and the community work together to make a firm commitment to education; and
16 whereas, Raymond Myrtle, principal of Highland Elementary School, and the staff and
17 school community are to be commended for this outstanding achievement, now, therefore,
18 be it resolved that the County Council of Montgomery County, Maryland, hereby
19 recognizes and salutes Highland Elementary School, 2009 National Excellence in Urban
20 Education award finalist; and be it further resolved that the County Council joins with the
21 students, teachers, parents, and community of Highland Elementary School in celebrating
22 their tremendous accomplishments that benefit all residents of Montgomery County, as
23 our children truly are our future. Signed this 28th day of April in the year 2009, signed by
24 Phil Andrews, Council President. Congratulations. So I hope you have a few words that
25 you'd like to share with us.

26
27 RAYMOND MYRTLE:

28 Well, we thank you very much. It really was very rigorous competition, and it was an honor
29 to be chosen out of hundreds of schools nationally as one of the final 11. Now, I don't
30 know why 11, not 10, not 12, but I think the most rigorous part of it was convincing
31 everybody that Montgomery County, Maryland, really did have an urban school. So we
32 think this is a great honor, and we're very excited about all that we've accomplished and
33 hope that we win many more. Thank you again.

34
35 COUNCILMEMBER ERVIN:

36 My pleasure. Thank you. Would you like to say a few words? No?

37
38 COUNCIL PRESIDENT ANDREWS:

39 Congratulations again to Highland Elementary School, and thank you, Councilmember
40 Ervin. Our next presentation will be a proclamation in recognition of the winners of the



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1 Montgomery County History Day competition, and I'm going to do the presentation, and I
2 will ask the students who are here to join me at the front here, where the other speakers
3 were, and Emily Correll, from the Montgomery County Historical Society.

4
5 EMILY CORRELL:

6 Come on. There's room for you all.

7
8 COUNCIL PRESIDENT ANDREWS:

9 We can do it. All right. Make a couple rows. Come all the way over, all the way over. You
10 can do it. Well, good morning, everybody. As I've said many times, one of the happiest
11 occasions here at the County Council is when we can recognize the excellent
12 achievements of our residents, including our young people, and we have a number of
13 outstanding young people behind me today who are winners of the Montgomery County
14 History Day competition. I think I see a few proud parents in the audience taking pictures. I
15 have attended this event on behalf of the County Council for a number of years, and the
16 Montgomery County Historical Society does a great job. Emily Correll is here-- there she
17 is--representing the Historical Society today, and they have many volunteers that help put
18 the History Day competition together. Many teachers and principals encourage students to
19 participate, and we thank them for that, and the quality of the projects is always very good,
20 and a lot of our Montgomery County winners have gone on to win state events and others.
21 And history is just a great foundation for everything else you are going to do in your lives.
22 So it's a real pleasure,

23 on behalf of the County Council, to recognize your achievement and to present to you a
24 proclamation. And I'll ask Miss Correll to come forward, and I will present the proclamation
25 to her on behalf of the entire Council and--to recognize the entire group. "Whereas, the
26 Montgomery County History Day competition challenges middle and high-school students
27 to broaden their interest in history; and whereas, the annual History Day competition
28 attracted about 300 students from 20 schools and once again helped participants develop
29 a high quality of research and writing skills; and whereas, the History Day competition
30 engages students to produce exhibits, documentaries, plays, or research papers using
31 multiple resources, and this year's theme, "The Individual in History," allowed students to
32 explore how one person can make a difference; and whereas, the History Day competition
33 requires students to present their research findings and conclusions in a structured format;
34 and whereas, Montgomery County History Day is a part of National History Day and is
35 sponsored by the Montgomery County public schools, Columbia Gas of Maryland, the
36 Maryland Humanities Council, the Arts and Humanities Council of Montgomery County,
37 National History Day, the Maryland Historical Trust, Gary Correll, and Ernst & Young LLP;
38 now, therefore, be it resolved that the County Council of Montgomery County, Maryland,
39 hereby congratulates the winners of the Montgomery County 2009 History Day
40 competition and commends your dedication and commitment, as your love of history is an

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1 inspiration and a source of encouragement to all young people in Montgomery County.
2 Presented on this 28th day of April in the year 2009." It's signed by me on behalf of the
3 Council as Council President. So, Emily, thank you for your leadership.

4
5 EMILY CORRELL:

6 Thank you.

7
8 COUNCIL PRESIDENT ANDREWS:

9 And congratulations to everybody here.

10
11 EMILY CORRELL:

12 Thank you.

13
14 COUNCIL PRESIDENT ANDREWS:

15 Let's give them a round of applause. And we have certificates for each of the students,
16 and I'm just going to call your name out, and please come up and receive your certificate.
17 And we're going in reverse alphabetical order this time, so this will be different from most
18 of your experience.

19
20 EMILY CORRELL:

21 There are a couple of them who aren't here, so...

22
23 COUNCIL PRESIDENT ANDREWS:

24 All right. All right. Is Maeve White? Maeve White. Maeve White. There we go.
25 Congratulations. Erica Vinson. Erica. There you go. Congratulations. Saphir Vilmar.
26 Saphir here? Congratulations, Saphir.

27
28 SAPHIR VILMAR:

29 Thank you.

30
31 COUNCIL PRESIDENT ANDREWS:

32 Michael Shafrir? Michal. I'm sorry. Michal, congratulations. Emily Vasiliou. Emily,
33 congratulations. Kay Yan Samantha Tong. Congratulations, Kay. Elisa Rivera. Elisa,
34 congratulations.

35
36 ELISA RIVERA:

37 Thank you.

38
39 COUNCIL PRESIDENT ANDREWS:

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1 Halie Ritchie. Halie, congratulations. Jeffrey Ramirez. Congratulations, Jeffrey. Sarika
2 Ramaswamy. Sarika, congratulations. Amartya Pandey. Congratulations. Sierra Polston.
3 Sierra, congratulations.

4
5 SIERRA POLSTON:

6 Thank you.

7
8 COUNCIL PRESIDENT ANDREWS:

9 Nick Park. Congratulations, Nick. Chlo Nickens--Chloe Nickens. Congratulations, Chloe.
10 Alanna Natanson. Alanna, congratulations. Andriana Miljanic. Andriana, congratulations.

11
12 ANDRIANA MILJANIC:

13 Thank you.

14
15 COUNCIL PRESIDENT ANDREWS:

16 Riley Mazariegos.

17
18 EMILY CORRELL:

19 He's not here.

20
21 COUNCIL PRESIDENT ANDREWS:

22 OK. Congratulations, Riley. Victor Martinez. Victor, congratulations. Miranda Lingenfelter.
23 Congratulations, Miranda. So Jung Kim. Congratulations, So Jung. Temi Ibirogbu.
24 Congratulations. Hanna Hwong. Hanna? Congratulations. Isabel Hendrix-Jenkins. Isabel,
25 congratulations. Stuart Grosvenor. Stuart, congratulations. Sarah Goldberg. Sarah,
26 congratulations. Elise Girard. Oops, there you are. Elise, congratulations. Lily Gates.
27 Congratulations, Lily. Julia Fine. Congratulations, Julia. Helen Felker. Congratulations,
28 Helen.

29
30 HELEN FELKER:

31 Thank you.

32
33 COUNCIL PRESIDENT ANDREWS:

34 Langston Cotman. Langston, congratulations.

35
36 LANGSTON COTMAN:

37 Thank you.

38
39 COUNCIL PRESIDENT ANDREWS:



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1 Audrey Cameron. Audrey, congratulations. And Adela Armstrong-Spielberg.
2 Congratulations, Adela. OK. And if there are certificates that were not--if you did not
3 receive one, we will get you one. We may have some... Emily has one.

4
5 EMILY CORRELL:
6 I have several.

7
8 COUNCIL PRESIDENT ANDREWS:
9 OK. You have several. Very good. OK. All right. Well, now the hard part, and that is
10 getting in the picture at the same time. All right? So we need to have the taller folks in the
11 back, and so on, OK?

12
13 NEIL GREENBERGER:
14 Can we get everybody closer in together? The closer, the better.

15
16 COUNCIL PRESIDENT ANDREWS:
17 Congratulations again to all of the winners of the Montgomery County History Day
18 competition, and thanks to all involved in putting the competition together. It's a big effort,
19 and it's a wonderful event. We're now going to go on to General Business--announcement
20 and agenda and calendar changes. Miss Lauer.

21
22 LINDA LAUER:
23 Good morning. We added--immediately following Consent Calendar this morning, the
24 Council will reconvene in the third-floor conference room behind us for a proposed Closed
25 Session that's to consider matters directly related to collective bargaining negotiations,
26 and the topic is disability retirement. That's the only change to announce, but we did
27 receive a couple of petitions, one supporting free Ride On Bus service for seniors and
28 person with disabilities and one supporting full funding of the libraries budget. Thank you.

29
30 COUNCIL PRESIDENT ANDREWS:
31 OK. All right. Thank you very much. And we'll now move on to action on approval of the
32 minutes of April 13, 14, and 15, 2009, and approval of Closed Session minutes of April 14,
33 2009. Is there a motion?

34
35 COUNCILMEMBER LEVENTHAL:
36 Let's approve the minutes.

37
38 COUNCILMEMBER ERVIN:
39 Second.

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1 COUNCIL PRESIDENT ANDREWS:

2 All right. That is a motion by Councilmember Leventhal, seconded by Councilmember
3 Ervin. All those in favor of approving the minutes, please raise your hand. That's
4 Councilmember Elrich, Councilmember Trachtenberg, myself, Council Vice President
5 Berliner, Councilmember Knapp, Councilmember Ervin, Councilmember Leventhal. They
6 are approved, 7-0. Now we will move into the Consent Calendar. Is there a motion?
7

8 COUNCIL VICE PRESIDENT BERLINER:

9 So moved.

10
11 COUNCILMEMBER ERVIN:

12 Second.

13
14 COUNCIL PRESIDENT ANDREWS:

15 All right. Moved by Council Vice President Berliner. Seconded by Councilmember Ervin.
16 Are there any comments on the Consent Calendar? Don't see any. All right. All those in
17 favor of the Consent Calendar, please raise your hand. That would be Councilmember
18 Elrich, Councilmember Trachtenberg, myself, Council Vice President Berliner,
19 Councilmember Knapp, Councilmember Ervin, and Councilmember Leventhal. It is
20 approved, 7-0. And I will now entertain a motion on a Closed Session.
21

22 COUNCIL VICE PRESIDENT BERLINER:

23 So moved.

24
25 COUNCIL PRESIDENT ANDREWS:

26 Actually--There you go.

27
28 COUNCIL VICE PRESIDENT BERLINER:

29 You want me to read this?
30

31 COUNCIL PRESIDENT ANDREWS:

32 Well, actually--
33

34 COUNCILMEMBER LEVENTHAL:

35 I'm going to move it. Yeah. Mr. President, I move that the Council go into Closed Session
36 to consider matters directly related to collective bargaining negotiations, pursuant to the
37 Maryland Code, State Government, article Section 10-508(A)9. The topic is collective
38 bargaining generally, including disability retirement.
39

40 COUNCIL PRESIDENT ANDREWS:

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1 OK. And seconded by...

2
3 COUNCIL VICE PRESIDENT BERLINER:
4 Second.

5
6 COUNCIL PRESIDENT ANDREWS:

7 Council Vice President Berliner. The motion was from Councilmember Leventhal. All those
8 in favor of going into Closed Session, please raise your hand. And that would be
9 Councilmember Elrich, Councilmember Trachtenberg, myself, Council Vice President
10 Berliner, Councilmember Knapp, Councilmember Ervin, and Councilmember Leventhal.
11 The motion to go into Closed Session for the purposes stated is approved, 7-0, and we'll
12 now move into Closed Session in the third-floor conference room, and then we will come
13 back for the rest of the session. Thank you.

14
15 COUNCIL PRESIDENT ANDREWS:

16 Good

17 morning. Welcome back to the session of the County Council. And I first want to make a
18 comment about some very sad news that we all heard of yesterday, and that was the
19 passing of Wayne Goldstein, who died yesterday of a heart attack on his way to testify, as
20 he so often did here at--in this Council building. All of us knew Wayne. He was a
21 remarkable person, an outstanding leader in the civic community, a very strong advocate
22 for historic protection, preservation. A relentless worker, but as much as that, Wayne was
23 someone who saw the humor and sometimes the absurdity in--in aspects of law and life
24 and was a delightful person to know, to work with. He had an impish sense of humor and
25 a great smile and a great collection of hats. And I know I speak for the entire body when I
26 say he will be greatly missed by us and by the community at large. And we extend our
27 sincerest condolences to his family. It's a terrible blow to them and to the community at
28 large, and we want to recognize the lasting contribution that Wayne Goldstein made to his
29 community. He served it very well. We do need to go back and approve Closed--or we
30 need to also approve Closed Session minutes of April 14, 2009. Is there a motion to do
31 so?

32
33 COUNCIL VICE PRESIDENT BERLINER:

34 So moved.

35
36 COUNCILMEMBER KNAPP:

37 Second.

38
39 COUNCIL PRESIDENT ANDREWS:



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1 All right. That's moved by Council Vice President Berliner, seconded by Councilmember
2 Knapp. I don't see any questions or comments, so with all--would all please raise their
3 hand if they support the approval of those minutes? And that is unanimous. OK. Our next
4 item is introduction of bills. There
5 are no introduction of bills, as far as I am aware, for today, so we will continue, and the
6 next item was to call a bill for final reading. I'll make some comments about how we're
7 going to proceed in this area, and then if others would like to make brief comments, they
8 may, as well. The subject of disability retirement reform is one that is of interest to the
9 entire Council and to much of the community and to, certainly, our employees and other
10 stakeholders in the system. And I think it's safe to say that-- and I am confident in saying--
11 that we all want a disability retirement system that provides that important benefit for our
12 employees who are disabled in the line of work, but that also
13 is one that includes the provisions that make it a system that is effective and has the
14 confidence of the public. And a lot of questions and concerns have been raised about the
15 system in the past eight months, beginning with the Executive's work group, then the
16 Inspector General's report. Consultants retained by the Council raised questions as well
17 about provisions in the system. And the Joint Committee of the MFP and Public Safety
18 Committee has met five times since September to hear the concerns and to consider
19 legislation, which is Bill 37-08. This is the first worksession that the full Council has had on
20 this matter, and we're not going to take action today because it is a complex issue, and we
21 have more work to do on it. But there is a lot of work going on that I expect will come to
22 fruition in the next few days, and as we work to develop a proposal that will both
23 adequately reform the system and be enacted by the Council, I expect that we will be back
24 next Tuesday with the details for consideration before this body, because I think
25 everybody agrees that the system needs to be reformed and that much time has elapsed
26 and that we need to take advantage of this--this opportunity to reform the system in a way
27 that meets the--both the needs of the employees to have a retirement system that
28 provides for their needs, but that also meets the test of public confidence in the system.
29 And so that is our--that's the outline of where we're going. We will not be taking action
30 today, but we will be coming back next week for action on amendments and any other
31 ideas that people have to the legislation that is before us that has been recommended by
32 the Public Safety and MFP committees. And I will turn--if there are brief comments that
33 people would like to make, they are welcome to, but people don't have to. And I want to
34 also note that Mr. Drummer, who is sitting at the table in front of us, has done a lot of
35 work, a lot of good work, on this issue, which everyone appreciates, and that we'll be
36 asking him to do more work in the next few days to craft proposals that the Council want
37 him to craft in order to move forward on this matter soon. I will turn now to Councilmember
38 Trachtenberg, who is the chair of the Management and Fiscal Policy Committee and who
39 is a co-sponsor--who has co-sponsored the legislation with me that is before us and who

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1 has been a very strong advocate and has done a lot of good work on this issue.
2 Councilmember Trachtenberg.

3
4 COUNCILMEMBER TRACHTENBERG:

5 Thank you, President Andrews. I just wanted to really make some very brief remarks.
6 Again, I wanted to acknowledge the hard effort that really, in my opinion, everybody
7 has put into the topic. There have been countless discussions, as the Council President
8 indicated, there have been five Joint Committee worksessions, but that doesn't even really
9 speak to the heavy lifting that's occurred since last summer on this issue, and I want to
10 make sure that we indeed acknowledge everybody-- those here within the Council
11 building, but really, quite frankly, those across the street, as well. And I just am stating for
12 the record that I have every confidence that meaningful reform will take place and that a
13 resolution will be found. And I want to also be very clear about the fact that I think the
14 ongoing conversation that we've had about this issue not only continues to be productive,
15 but I think it's very defining for this Council, and I do not believe that the issue of disability
16 retirement reform is an issue that will divide us ultimately, but rather, one that will bring us
17 together as a body. And in politics, you learn to be an eternal optimist, but really, quite
18 frankly, you also learn that in life, and who better to recognize that than those who serve
19 us in the public safety community, specifically our police officers? So I am optimistic that
20 resolution and reform are around the corner, and I thank my colleagues for their continued
21 hard effort on this very important topic.

22
23 COUNCIL PRESIDENT ANDREWS:

24 Thank you, Councilmember Trachtenberg. Let me add that there's a lot of hard work that's
25 been done by the County Executive and by the Fraternal Order of Police in
26 working on discussions that they have had to develop reforms, and I think they will be
27 very helpful in what the Council ultimately passes, and I appreciate that effort, as well.
28 Councilmember Floreen.

29
30 COUNCILMEMBER FLOREEN:

31 Thank
32 you. I just have some questions about how we're going to operate here, Mr. President. I
33 would like to ask questions of the County staff, who have been-- who are resources for
34 this, and I would hope that we would have such individuals available to support us.
35 Because this is in response to the Inspector General report, I would also-- it would be
36 helpful, it would seem to me, to have the Inspector General here, so if we had questions
37 about that... I know that there are ongoing negotiations that have not been concluded, and
38 that creates a challenge for our conversation today. So understanding that that is sort of at
39 one corner of the table, as it were, it seems to me that it would--I guess what we're going
40 to hear today is a presentation by Mr. Drummer of what's in the bill. Is that the idea?

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1
2 COUNCIL PRESIDENT ANDREWS:

3 Yeah, we'll hear a brief presentation about the bill.
4

5 COUNCILMEMBER FLOREEN:

6 And then we will bring our questions back next week. Is that the thought?
7

8 COUNCIL PRESIDENT ANDREWS:

9 Well, the questions, I would encourage people to provide to me as soon as possible, and I
10 will relay them to get answers.
11

12 COUNCILMEMBER FLOREEN:

13 For those of us--we very much respect the work of the committees, but for those of us who
14 aren't on those, you know, it's a real education. And we've never talked about this as a
15 collective body, and--frankly, since I've been here, we haven't, so this is a sort of question
16 of Disability Retirement 101, which I would hope that perhaps we would hear today what
17 the current rules are so that we know how we're changing things.
18

19 COUNCIL PRESIDENT ANDREWS:

20 Right. That's what we can accomplish today, and Mr. Drummer will be able to do that, and
21 then any questions that people have, please get to me as soon as possible. We will get
22 answers as soon as possible.
23

24 COUNCILMEMBER FLOREEN:

25 Get them to you at a--after today's session.
26

27 COUNCIL PRESIDENT ANDREWS:

28 Yes.
29

30 COUNCILMEMBER FLOREEN:

31 OK. Fine. Thank you.
32

33 COUNCIL PRESIDENT ANDREWS:

34 And then we will have any individuals that people--I expect to have the Inspector General,
35 staff from the Executive from different departments, certainly, for the next meeting.
36

37 COUNCILMEMBER FLOREEN:

38 Fine. Thank you.
39

40 COUNCIL PRESIDENT ANDREWS:

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1 And anybody else anyone would like here.

2
3 COUNCILMEMBER FLOREEN:

4 That's very helpful. Terrific.

5
6 COUNCIL PRESIDENT ANDREWS:

7 All right. Thank you. Councilmember Leventhal.

8
9 COUNCILMEMBER LEVENTHAL:

10 Thank you, Mr. President. And I appreciate your work as chairman of the Public Safety
11 Committee and the work of the chair of the Management and Fiscal Policy Committee on
12 this issue. We, I hope, will learn about a number of details of the Human Resource
13 process. I hope that this is not the beginning of the Council becoming Human Resource
14 managers. I think that is not what we are best suited to do. And so, it was brought to our
15 attention both by the County Executive's work group and the Inspector General that the
16 numbers--there's about 11 officers who are retiring per year on disability, and as a
17 percentage of the retirees, that is higher than other jurisdictions. And as the Council
18 President said, we would all like to see that resolved, and I'm optimistic, under your
19 leadership, Mr. President, that we'll be able to resolve this in the near term. I want to
20 acknowledge the presence in this room of several of our uniformed police officers. I know
21 that when citizens in Montgomery County need a police officer, they get a quick response,
22 and that Montgomery County residents feel safe and secure with the protection that is
23 provided to us by our officers and that officers need to know that when they are in harm's
24 way, that if they are injured, that there will be a system in place that will provide for them
25 and their families if they're not able to do so themselves. I know you share that principle,
26 Mr. President, but I do think it's important for us to understand the context in which this
27 discussion is taking place. We are talking about police officers. We're talking about-- we're
28 not talking about people who have abused the system. We're not talking about people who
29 have been dishonest. We are talking about people who have retired who were injured in
30 the line of duty, who have retired under the rules that were negotiated over many years.
31 We have received reports year after year about those officers who had been retired--and it
32 was brought to our attention that

33 there was a discrepancy in the percentage. So I'm optimistic that we can resolve this. I--
34 and I know I'm not alone in this. I know that all of my colleagues very much appreciate the
35 work of the police officers who protect our lives and property, and I just wanted to make
36 that point because I do think it's important to remember who it is we're talking about in this
37 discussion.

38
39 COUNCIL PRESIDENT ANDREWS:

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1 Thank you. Well said. Thank you, Councilmember Leventhal. All right. We're now going to
2 have Mr. Drummer give us a summary of how the bill would change the existing Disability
3 Retirement System. And I should say the bill is a bill that applies to all employees as
4 drafted. So, Mr. Drummer, if you'll take us through in about 15, 20 minutes, of the
5 changes, if you can? Roughly that.

6
7 ROBERT DRUMMER:
8 Maybe less.

9
10 COUNCIL PRESIDENT ANDREWS:

11 I know you can do it. Or close to it. And there's a good summary --there's a good summary
12 in the bill, and I'll find it shortly --a two-page summary of the changes. So--but if you can--

13
14 ROBERT DRUMMER:

15 Circle 44 is a summary of the bill as it was introduced. There have been some changes in
16 committee.

17
18 COUNCIL PRESIDENT ANDREWS:
19 OK.

20
21 ROBERT DRUMMER:

22 The bill does two basic--as you said, it applies to all County employees, not just police and
23 not just fire, and includes management and not just bargaining unit members. The bill
24 would change the current system in that currently, we have what's called a Disability
25 Review Panel which is three--three doctors appointed by the--appointed jointly by the
26 county and the unions, essentially, to a four-panel doctor--four-panel group of doctors,
27 adding the-- it adds the extra doctor to ensure that there would be three available for each
28 case. Currently, there's only three, and oftentimes, they hear cases with just two people.
29 And that's to allow for greater opinions and a minority report, if in fact there is a close call
30 and there's a dispute between the doctors. It also requires that at least two of the four
31 doctors have experience in Occupational Medicine, which is something that was brought
32 to our attention by the outside consultant, that you need to make--that that was an area of
33 medicine that was helpful for these kinds of decisions. It also--the bill would change how
34 the medical panel is appointed. Essentially, there would be--the County would have to hire
35 an impartial organization to--to review qualifications, solicit applications, and provide the
36 Executive with a list of physicians who were qualified, and then the Executive would
37 appoint the members of the panel, subject to confirmation by the Council.

38
39 COUNCIL PRESIDENT ANDREWS:
40 Mr. Drummer is on circle 44. Right?

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1
2 ROBERT DRUMMER:

3 Yes.

4
5 COUNCILMEMBER KNAPP:

6 Mr. Drummer, if you could, as you talk about it, really--I understand this identifies the
7 change, but tell what the makeup --could you kind of say what it is and then what the
8 change is? I think that that's helpful to understand. Most of us haven't gotten into that level
9 of minutiae, and I think it's worthwhile to--recognizing that there is a change, but where are
10 the radical departures, where are the minor modifications? Just to get that sense.

11
12 COUNCIL PRESIDENT ANDREWS:

13 I think it would be useful for the next--for next week to have a chart that shows the current
14 and the proposal next to each other.

15
16 COUNCILMEMBER KNAPP:

17 That would be helpful. Thank you.

18
19 ROBERT DRUMMER:

20 With the Medical Review Panel, other than the change in the name, the differences are,
21 we add an extra doctor, we change--we change how they're selected, we require at least
22 two of them to be qualified in Occupational Medicine. And the last change is actually the
23 role of the board. Currently, the three doctors actually make a decision as to whether
24 somebody--an initial decision as to disability. In the bill, we've limited their decisionmaking
25 to very specific medical questions, which you can see on page 11 of the bill. And they
26 were actually amended, at the request of the County Attorney's Office, by the committee.
27 But there are specific medical questions, the theory being that the doctors will decide
28 medical issues. The actual decision as to disability would be decided by an administrative
29 board. Now, the second part of that--I should add, the Medical Review Panel-- currently,
30 the Disability Review Panel has the authority to require an independent medical
31 examination but doesn't have to. The bill changes that. It requires that an IME be done all
32 the time unless the board finds that it's really not necessary on a specific case.
33 Essentially, based on the severity of the injury, there are situations where it's really not
34 necessary.

35
36 COUNCIL PRESIDENT ANDREWS:

37 OK. Is there a--OK. Councilmember Floreen.

38
39 COUNCILMEMBER FLOREEN:



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1 Just, as you go through, Bob, if you wouldn't mind, in addition to what Mike has asked,
2 could you just sort of explain what the
3 problem is that--that these changes are addressing so we understand the existing rule,
4 what the problem was, and why we're--why you're proposing the change--these changes.
5 Thanks.

6
7 ROBERT DRUMMER:

8 The problem with the specific question was to try and limit the doctors to what they do
9 best, and that's giving opinions on medical issues, and allow the Administrative Board to
10 make the administrative decisions. And that came from the consultant's managed care
11 advisors, as well as we've seen in other areas as a best practice--to try and, you know,
12 use your doctors more as expert witnesses and not as deciders of fact, because that's
13 what they're good at. And--so that's essentially the reason for that change, to give them
14 specific medical issues to resolve, and to add a fourth one to require that if it's a 2-1
15 decision, the one person who dissents would have to write their own report--a written
16 recommendation as to why they
17 feel differently, so that the Administrative Board would get both sides of the issue from the
18 doctors if there's a disagreement. If there's no disagreement, they obviously-- they only
19 get one opinion, and that's their only medical opinion.

20
21 COUNCIL PRESIDENT ANDREWS:

22 OK. Councilmember Trachtenberg.

23
24 COUNCILMEMBER TRACHTENBERG:

25 Just to provide further clarification --basically, the function of the medical panel would be
26 to determine incapacity eligibility --in other words, determine if indeed there is an
27 incapacity, and it would be--their activity and decision would be complemented by an
28 administrative decision, specifically, and administrative function, and we'll get into that as
29 we go down the components of the proposed legislation. But again, it's asking medical
30 personnel, doctors--specifically, too, that are certified in Occupational Medicine--to make a
31 determination about incapacity. And that basically is, again, a best practice.

32
33 COUNCILMEMBER FLOREEN:

34 And they're not doing that now?

35
36 COUNCILMEMBER TRACHTENBERG:

37 Well, there's only one physician currently who's certified in a related discipline. We've only
38 had one physician in the entire history of this panel sitting who was actually certified in
39 Occupational Medicine, and it's really an industry standard, a public health standard, that
40 when you have an incapacity determined, it's really best to be determined by those that



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1 are experienced. And so, the way the language in this bill is written, it requires two folks to
2 have that certification. It also requires that there be some relevant experience, and--
3 sports rehab, for instance, medicine is considered to be a germane discipline, that it's
4 relevant to any kind of decisionmaking on this. But the idea here is to bring in more
5 specific expertise.

6
7 COUNCIL PRESIDENT ANDREWS:
8 Thank you.

9
10 ROBERT DRUMMER:

11 The next stage is instead of--the current law has essentially an interim final decision made
12 by the three doctors which, under current law, is called a Disability Review Panel. It comes
13 to the Chief Administrative Officer, who then actually makes what's considered the initial
14 decision as to whether someone is entitled to disability retirement or not. The problem with
15 that was it comes to the CAO as a fait accompli that he can either say yes or no, and if he
16 says no, then he's got to
17 write an opposing medical opinion, essentially to say why he doesn't agree with the three
18 doctors, leaving the CAO in a kind of untenable position to reverse it. The bill changes
19 that, and it goes along with the first change. If the doctors are only making medical
20 decisions and they're not making a final decision as to whether this person is entitled to
21 disability, that that decision is given to the--an administrative board. The board, in the bill
22 as it came out of committee, it was changed--the composition of the board was changed in
23 committee. But as it came out of committee, the board has essentially three ex officio
24 members. Two of them--one of them is the Chief Administrative Officer, one of them is the
25 director of Human Resources, and one of them is the director of the office or department
26 that the person works for, and that would be a rotating position. And if the person doesn't
27 work for a principle office or department--which is rare but does happen--then it would be
28 the director of OMB as the third person. Then there would be one person on the board--is
29 a five-member board. The fourth member of the board would be a current active member
30 of the retirement system--in other words, an active employee who's nominated by the
31 employee organizations, all three of them. And then the fifth person would be a member of
32 the general public who has never been a County employee. That's the board. The appeal--
33 if you're --if the employee--if the board determines that there's no disability or you get
34 something less than you're asking for, you have a right to appeal, under the current law,
35 from the CAO's decision, and you still have the same right of appeal. The bill changes the
36 pers--the board that makes the decision. Currently, there's a three-member panel called
37 the Disability Arbitration Board, and there is, I think, several different boards, and one
38 specifically just for police. And each board consists, essentially, of a neutral labor --neutral
39 third party, which is usually a labor arbitrator, that does that--you know, is a labor arbitrator
40 by profession, jointly selected by the parties --and the other two would be one person



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1 selected by management and one person selected by the union, or if it's a non-union
2 person, then selected by the employee. The bill would change that to just a third-party
3 neutral arbitrator, jointly selected by the parties. And the feeling that the subjective parties
4 were not-- were not really moving forward, were not aiding the appeal--I mean, that they
5 were simply advocating to the third party

6 neutral, you know, the position of who they represented and weren't actually--because
7 that, you know, they're not neutral, and they're not supposed to be neutral. The-- those are
8 the procedural changes in the bill, essentially, as far as the process. They would apply to
9 everybody. It would apply to --the changes would apply to members of all three bargaining
10 units and management in all three bargaining units. It would also--these changes would
11 also apply to members--there's a different Disability Retirement System for employees
12 who are in the Retirement Savings Plan, and I'll describe the difference later, but--as far
13 as the amount of benefits--but now under the bill, the procedure would be the same for
14 everybody. It would be the same panel-- the same medical panel--the same disability
15 board, and the same labor arbitrators. So procedurally, you'd go through the same
16 process.

17
18 COUNCILMEMBER KNAPP:

19 So any employee in County government would go through the same process.

20
21 ROBERT DRUMMER:

22 Yes.

23
24 COUNCILMEMBER KNAPP:

25 Everyone?

26
27 ROBERT DRUMMER:

28 Yes.

29
30 COUNCILMEMBER KNAPP:

31 OK.

32
33 ROBERT DRUMMER:

34 But the benefits are different, depending on the retirement group. The--all right, the bill
35 then makes some substantive changes in the--in the actual benefits. The current benefit
36 now is for members of the ERS, and that's--ERS, if you remember, is all public safety
37 employees and all non-public safety employees hired before October 1 of 1994. So if
38 you're in the ERS, your current benefit is if--whether you're totally or partially disabled, you
39 get $66 \frac{2}{3}$ as a minimum of your average final earnings. If your normal retirement
40 calculated would be higher than that, you do get the higher amount. You'd get your normal

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1 retirement. But that's not very common. So usually, you know, the 66 2/3 is what you're
2 going to get. It is --because of federal tax law, is tax free, if you receive it on that basis
3 under the current IRS code. So it's tax-free income. The bill changed--I do need to make
4 one change in what I just said. The 66 2/3 applies to everybody except the Group F, which
5 is the firefighters and the firefighter management chain. The firefighters, under the current
6 law, have a split system which is total disability--although it's not called that--70% of their
7 final earnings, and partial disability, and this is 52.5%. The difference between total and
8 partial is, total, you need to meet the Social Security standard, which is you're unable to
9 have any other substantial gainful activity. You can't work at all. And the partial is, you
10 can't do your specific job, which in the case of a firefighter and a police officer, it's very
11 possible that you could have a knee injury or a back injury that would prevent you from
12 being a police officer or a firefighter but would clearly allow you to work in many other
13 occupations, like you could be a lawyer, you know. But--Roger woke up with that. "What?
14 You could be a lawyer?" I think you have to go to law school, too. But... So maybe that's a
15 bad example. The bill would change everybody in the ERS' benefit to the same as the
16 firefighters' benefit-- would have a total incapacity at 70%, partial at 52.5--the same
17 difference in how it's calculated. For most--you know, for the police officers, that would
18 make a substantial difference. It appears, from looking at the injuries that people have
19 gone out on disability over the past 10 years, that most of them are orthopedic injuries,
20 which are probably not going to prevent you--you're not going to meet the Social Security
21 standard with a bad back or a bad knee or something like that, even though you can't be a
22 police officer anymore. So that would make a big change for the police. It'll --for those
23 police officers who actually do meet the Social Security standard, it actually raises the
24 benefit, from 66 2/3 to 70%. But the vast majority would go down to 52.5%. In fact, this
25 might be a good point-- time to point that out. The Fiscal Impact Statement included a
26 report from the actuary that Human Resources uses to determine the annual contribution
27 that the County has to make to the ERS, and there's only one contribution. There's not a
28 separate one for disability and one for normal retirement. I think in this year's budget, the
29 contribution is \$115 million. The actuary, of course, as actuaries do, they make different
30 assumptions, and they give you different scenarios, but essentially their --and their report
31 is on circle 117--indicates that the change, you know, from 66 2/3 to 70 and 52.5--you
32 know, the split from total and partial-- is, in their estimate, going to lower the annual
33 contribution, depending on your assumptions, between a little over one million and up to
34 three million, depending on how many people you assume get total and how many get
35 partial and how long you amortize it. So that's where the money comes in--that provision.

36
37 COUNCIL PRESIDENT ANDREWS:

38 A couple of lights. First, Councilmember Trachtenberg, then Councilmember Floreen.

39
40 COUNCILMEMBER TRACHTENBERG:

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1 Bob, actually, one thing that might be helpful for the future conversation we're going to
2 have --again, specific to the two-tier system--could we get some information on the history
3 of that over--with fire personnel and what the experience has been around that change,
4 and, you know, has-- what has it done in terms of eligibility numbers of those that receive
5 it and also how it fits into some of what they do, again, specifically through the FRMs
6 ????? programming? In other words, let's get some context about how it's been a benefit,
7 because it's my understanding from talking to fire personnel --specifically, our fire chief --
8 that it's viewed as a real benefit for employees, and I'd like us to at least have that
9 information, whether it's germane to what ultimately gets decided by this body or whether
10 it's just germane to any future conversations, but it's clearly a best practice, but I'd like to
11 get some sense of how it's actually worked with fire personnel.

12
13 COUNCIL PRESIDENT ANDREWS:
14 OK. Thank you.

15
16 ROBERT DRUMMER:
17 Sure. I can do that.

18
19 COUNCIL PRESIDENT ANDREWS:
20 All right. And Councilmember Floreen.

21
22 COUNCILMEMBER FLOREEN:
23 Yeah, a couple of things. One--and this applies to all this. This is--none of this applies to
24 MCPS.

25
26 ROBERT DRUMMER:
27 That's right. They're not in--they're not in the same retirement plan.

28
29 COUNCILMEMBER FLOREEN:
30 They're not in the system? The other thing is, for the actuarial projections--and I guess this
31 is somewhat a subject of negotiation, but these changes wouldn't apply to individuals
32 currently on disability?

33
34 ROBERT DRUMMER:
35 No. The bill doesn't change anybody's pension that's already on disability. It would stay
36 exactly the way it is.

37
38 COUNCILMEMBER FLOREEN:
39 For individuals who came back for medical reviews, would it apply to those?
40

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1 ROBERT DRUMMER:

2 No. It would be based on the, you know, date that you originally applied for disability
3 benefits, so if you're already on disability, it wouldn't affect you at all.

4
5 COUNCILMEMBER FLOREEN:

6 Wouldn't affect you at all. Would it apply to current employees covered by agreements?

7
8 ROBERT DRUMMER:

9 Yes. It would apply to current employees who have not yet been injured and have not
10 applied for disability benefits.

11
12 COUNCILMEMBER FLOREEN:

13 I think that's an interesting issue. I noted that there was some disagreement, I think--

14
15 ROBERT DRUMMER:

16 Yeah, there is.

17
18 COUNCILMEMBER FLOREEN:

19 Between you and the County Attorney on this subject.

20
21 ROBERT DRUMMER:

22 Yes.

23
24 COUNCILMEMBER FLOREEN:

25 So it's important to--just put that on the list of things to be sorted out as to whom this
26 would apply. And I--and we don't have to resolve it now. I just--I read that in the very
27 complete packet, and I thought it was helpful to understand. So there is that--something of
28 a debate there.

29
30 ROBERT DRUMMER:

31 There's a debate between whether the bill can be effective--should be effective as to
32 injuries that occur after the effective date of the bill or just applications. And to tell you the
33 truth, it's a close call. It's not obvious to whether you can do that or not, whether you're--in
34 other words, the law generally states that you can't take away vested rights, and the
35 question is, when does your right to a disability retirement vest? And it's not when you
36 start employment. It's when--some of the cases seem to indicate it's when you get injured.
37 I think it may be when you actually perfect your--you know, when you do everything--you
38 satisfy all the conditions necessary to receive disability, which includes applying. But it
39 could make a difference, I mean, because people, you know, can have an injury, you
40 know, several years ago and not yet applied for disability. In fact, that's likely. So there are

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1 people that would be in that interim--it would affect people. It does make a difference.
2 There's also a question between my opinion-- it's in the beginning of the packet--and the
3 County Attorney's Office about whether it would be enacting this legislation today--I think
4 we both agree the Council has the authority to do this, but the question is whether it would
5 be an impairment of contractual rights to apply this law to-- to apply this law now or--the
6 County Attorney's Office would caution it would be safer. They're not really saying it's an
7 impairment of contracts under the Constitution. They're saying it might be. And again, it's
8 a close call, and I have to say, it's debatable. As to whether this bill would need to be
9 effective for union members after the expiration of their current Collective Bargaining
10 Agreements--

11
12 COUNCILMEMBER FLOREEN:

13 Yeah.

14
15 ROBERT DRUMMER:

16 And the dispute there really is, where do the rights, the disability rights, come from? Are
17 they contractual rights in a Collective Bargaining Agreement, or are they simply part of the
18 legislation? You know, are they rights created by law? I mean, I feel that they're rights
19 created by the statute--that the Collective Bargaining Agreement is simply an agreement
20 to submit legislation to the Council. We could probably debate that all afternoon for you,
21 but, you know --Marc can weigh in if he wants, but there is a dispute as to the effective--
22 whether there might be an impairment of contracts if you made this effective for bargaining
23 unit members, for everybody but police would be through July 1, 2010, I think, and for fire
24 would be July 1, 2011.

25
26 COUNCILMEMBER FLOREEN:

27 So that's an interesting--I thought that was an interesting exchange in the packet, and--

28
29 COUNCIL PRESIDENT ANDREWS:

30 And it is.

31
32 COUNCILMEMBER FLOREEN:

33 And helpful to understand in terms of the actuarial expectation of cost savings or not. The
34 other thing, and it's not--sort of relevant to this point, since I'm on it--the issue of how you
35 manage your retirement and your disability, I think, depends upon the package of-- of
36 benefits, I guess, that are associated with that decision, and there are--there's been a lot
37 of attention to us versus Fairfax in terms of how the benefit package made available to
38 different--people of equivalent status but entitled to different benefit packages. Maybe--
39 and that would play into this actuarial projection of who might choose to go through this
40 process and who might just take a regular retirement, if that were an option. Maybe for

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1 next week when we come back to that, you could get us a little bit more information. There
2 was a-- there have been suggestions that, by some, that the Fairfax program is the same
3 as ours and that the comparison would be apples to apples, and then there have been
4 some--some that have said that it's different, and it would be helpful to understand the
5 facts there.

6
7 ROBERT DRUMMER:

8 I can look into the Fairfax program. I can--I can tell you that the actuary's report that's in
9 the packet makes the assumption that the normal retirement doesn't change. Obviously, if
10 you increase normal retirement benefits and then go to this split, then the savings from the
11 disability split are going to be --you'd have to subtract the increased cost of the--of adding
12 to the normal retirement.

13
14 COUNCILMEMBER FLOREEN:

15 And I guess that would be a question for those involved in negotiations, as to whether
16 that's occurring. I'm not aware that it is, but I don't know. That's not really your department.
17 We'll ask that question next week. Thanks.

18
19 COUNCIL PRESIDENT ANDREWS:

20 Thank you.

21
22 ROBERT DRUMMER:

23 All right. Just to--so you understand the difference in the current law. For members of the
24 RSP--and that's non-public safety employees hired after October 1, 1994--they have--they
25 receive a disability retirement of 66 2/3% currently, and the bill doesn't change that.
26 However, their benefit--you need to understand their benefit a little more, because the
27 RSP benefit stops at age 65, and you then go--you then get your normal retirement that
28 you would get from RSP, which is what would the value of your contribution account, and
29 the County, while you're on disability, continues to make their 8% contribution every year
30 to your retirement account. So it's simply an income replacement for the period of time
31 when you would have worked had you not gotten hurt, and then it stops totally. And
32 there's also offsets for outside income and several other types of offsets for the RSP. And
33 the other matter is, for non-public safety employees, it's--partial disability to be unable to
34 do your job is less likely. I mean, if--just less likely to happen, that there, you know--
35 certainly the orthopedic injuries are not often going to prevent you from doing your job if
36 you're not a public safety employee. It depends on your job, though. There may be jobs
37 with--there are jobs--I can't say there may be. There are jobs where that would make a
38 difference. I think we did have a big--I think there was an old case about a disability,
39 whether partial and full, that went to the Court of Special Appeals, and the person was
40 working for the Liquor Control Board, and he couldn't lift the boxes to put on the shelves,

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1 and that's why he couldn't do his job. But that was part--you know. But anyway, so I can't
2 that say it never happens, but it just doesn't happen as often. The... the other changes in
3 the bill are with regard to reporting requirements. If you're claiming disability, service-
4 connected disability retirement, due to an accidental injury on the job, the bill would
5 require that you report the job--the way it came out of committee--within 30 days of the
6 event that it-- you know, of when it occurs, that you report there was an accident, you got
7 hurt, so that the--the reason for that is so that we would have a record, have a chance to
8 investigate it and have a record of what happened, which may be useful later on if you
9 apply for disability retirement claiming that that's what got you injured. That's something
10 the doctors would need to know if they're going to make a determination as to whether the
11 symptoms they see five years later are a result of the accident that happened five years
12 earlier. Secondly, the bill that came out of committee requires someone to file an
13 application for disability retirement within one year after leaving service. The current law
14 has no requirement. You could file at any time, even years after you retire. Let me see.
15 There--the bill also has a provision that, as it came out of committee, that changes your
16 ability to receive a pension-- it changes--it limits the amount of your disability retirement
17 pension if you've committed a felony, and the limitation is that--you use final earnings to
18 determine the 66 or 70% or 52.5% you use of final earnings. When we calculate final
19 earnings, if you've committed a felony, we look to your salary as it was at the time you
20 committed the offense, which may be a big difference and may not be, depending on
21 when you committed the offense. If it was three months before you applied for disability,
22 then it's probably not going to make a big difference. If it was three years before, it might
23 make a-- you know, it might make a difference.

24
25 COUNCIL PRESIDENT ANDREWS:

26 Hold on just a second. Councilmember Elrich has a question.

27
28 COUNCILMEMBER ELRICH:

29 So suppose somebody is on the job, say, five or six years, and they get disabled and go
30 out. What's the basis for their pay, and how is it adjusted in future years? If you're out on
31 the disability.

32
33 ROBERT DRUMMER:

34 Well, if you are out on disability, you get, you know, you get an award at the time you're
35 given disability, and--I'm not really sure. I mean, are you asking about the cost of livings
36 after your--

37
38 COUNCILMEMBER ELRICH:

39 I mean, if

40 I retire on the last--the average over the last three years, whatever it is, and you're six

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1 years into the force, does that then become the high-water mark for you, plus whatever
2 inflation adjustment there is on an annual basis?

3
4 ROBERT DRUMMER:

5 Yeah. In other words, when you leave--you know, when you become disabled, if your, you
6 know, your salary is 40,000, if that's your average final salary for the three years before
7 you became disabled, that's what's used to determine your disability benefit.

8
9 COUNCILMEMBER ELRICH:

10 So basically, all you'd be able to keep up with over time, perhaps, is inflation, but if you
11 had stayed on the job, you'd think theoretically, your wages every year would be adjusted
12 for both inflation and for whatever steps you would have earned. And so, in this system,
13 you're just capped at wherever you are at the point of retirement, and there's no
14 assumption about where you would have been had you been able to maintain your job.

15
16 ROBERT DRUMMER:

17 No promotions, no.

18
19 COUNCILMEMBER ELRICH:

20 OK. Or even steps, which don't involve promotions.

21
22 ROBERT DRUMMER:

23 Or steps. You're right. I mean, it's set at the time you're disabled. That's right. I mean, it's
24 as if you retired at that point, you know? Once you retire on normal retirement, you're no
25 longer eligible for step increases. You just get whatever cost of living adjustment is in the
26 retirement plan.

27
28 COUNCILMEMBER ELRICH:

29 OK.

30
31 ROBERT DRUMMER:

32 Some other issues that the committee went over that are in the bill is a requirement that--
33 the bill currently requires, or permits, the Chief Administrative Officer to call people back
34 and have

35 them reexamined after they receive disability in order to determine if they're still disabled,
36 because in reality, the decision that someone is disabled is a medical judgment, usually in
37 part based on a doctor's report, that somebody's injuries are permanent. And we all know
38 that it's basically the doctor's, you know, educated guess based on what he sees in front
39 of him that this is going to be permanent, and sometimes that's not true. Sometimes
40 people get better. And so the bill, although it's currently allowed, the Chief Administrative

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1 Officer until recently--until this year-- had not been doing that, had not been calling people
2 back. The bill requires that everybody is called back for a medical examination once a
3 year for the first five years and then once every three years after that unless the CAO
4 finds, again, that it's unnecessary. And now, you know, there are situations where
5 somebody is paralyzed and you may not need to keep--or if they lost an arm, they're not
6 going to--you know, it's not going to change. But for the vast majority of cases, you would
7 have them reexamined. So the bill does that. The bill also--and this is a request from the
8 County Attorney's Office--require each applicant for disability to provide all medical
9 records beginning five years before becoming a County employee. And this is based on
10 the County Attorney's Office's experience that there are times when they'll go to these
11 panels and hearings, and the employee won't be providing them. There's no-- there's no
12 subpoena power, so there's no way to force the other side to give you their medical
13 records, and sometimes they feel they're not getting all the medical records that are
14 necessary. So if it's a requirement in the law, then the panel would be able to require it
15 and wouldn't have to, you know, make a decision until they get it. So that's in there. As I
16 said briefly before, the County Attorney's Office added a couple of questions to the list of
17 questions based on their experience in handling these cases, and the committee agreed
18 with that. The bill also would limit--and this is also a County Attorney's Office request --
19 limit the consideration of medical records by both the Disability Review Board--the
20 administrative board--and the arbitrator to only those records that had been considered by
21 the three--three doctors on the Medical Review Panel. The reason for that is, while
22 there's-- it's not unusual for new medical records to be created after the review panel
23 makes its decision. The reason to do this is to make sure that--because both the board
24 and arbitrator have the authority to send something back --send the case back to the
25 Medical Review Panel to look at these new medical records. And the law would then
26 require that if you're going to think--if you're going to consider these new medical records,
27 you will send it back to the doctors and get their take on the records before you make a
28 decision. In other words, let's not have the non-physicians later on in the process
29 reversing a decision or reversing the opinions that the doctors gave you based on new
30 medical evidence that the doctors haven't seen. Let's go back to the expert witnesses and
31 find out what they would say about this new medical evidence. So that's in the bill, too,
32 and that's procedural change. There's also a minor change on the time period for an
33 appeal to the arbitrator. It's --if you're--the employee is unhappy with the Disability Review
34 Board, the appeal is now, you have 30 days from the date the decision is mailed to you,
35 and that's fairly consistent with administrative law. And that's the bill. I mean, that's what
36 the bill does. I don't think I have any other changes, unless I forgot something.

37
38 COUNCIL PRESIDENT ANDREWS:

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1 All right. Thank you. Thank you very much for the good summary, Bob. And you've worked
2 on this bill and the issues surrounding it for a long time, and we'll be asking you to do a lot
3 more work in the next few days, as well, so thank you. Councilmember Knapp.

4
5 COUNCILMEMBER KNAPP:

6 Thank you, Mr. President. In addition to kind of doing the side by side, there were-- there
7 was the Executive Task Force, there was the IG's report. If you could also notate which of
8 the things that have been proposed legislatively are--cover the items that have been
9 raised as issues in those reports, because presumably that has lent itself to the issue, or
10 framed the issue, as to things that needed to be addressed, and so we ought to
11 understand what's covered, what's not covered, because it's more than what was
12 requested in those reports. Thank you.

13
14 COUNCIL PRESIDENT ANDREWS:

15 That's right, and one other thing. That's a--I appreciate the request. We also, I think, have
16 a letter from the Inspector General about the legislation that, I think, would be important to
17 review, as well, in terms of comments. OK?

18
19 COUNCILMEMBER KNAPP:

20 OK.

21
22 COUNCIL PRESIDENT ANDREWS:

23 Any other comments or requests for information? All right. Thank you very much. Thank
24 you, everybody. We are going to adjourn or recess for lunch, and we have a brown bag
25 upstairs with each other, the sixth floor, and then we're coming back at 1:30 for public
26 hearings and action on two of those items and then committee meetings this afternoon.

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TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner, Vice President

Councilmember Marc Elrich

Councilmember Michael Knapp

Councilmember George Leventhal

Councilmember Duchy Trachtenberg



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1 COUNCIL PRESIDENT ANDREWS:

2 Good afternoon, everybody. Welcome to public hearings of the County Council. We have
3 4 public hearings this afternoon, and the first one is a public hearing on Bill 12-09, Ethics,
4 Ex parte Communications, that would further define which communications are allowed
5 when a decision must be made on the basis of a record and generally amend the County
6 law regarding communications to decision makers. Persons wishing to submit additional
7 material for the Council's consideration should do so before the close of business Friday,
8 June 5, 2009. And a Management and Fiscal Policy Committee work session is tentatively
9 scheduled for Monday, June 15, 2009, at 2:00. We do have 2 speakers signed up for this
10 hearing, and they are Esther Gelman, former County Council member--welcome--and
11 William Kominers, both speaking as individuals, and as you'll see as you arrive at the
12 table, there is a box with lights in front of you. They will light up. The yellow light will light
13 up with 30 seconds to go, and then there'll be a red light at 3 minutes, so just keep an eye
14 on that. Please remember to press the button before you speak, and if you have written
15 testimony, we welcome that, and we will have speakers, as well, on the next public
16 hearing, and then the final two do not have speakers. So welcome to the Council--back to
17 the Council, Ms. Gelman.

18
19 ESTHER GELMAN:

20 My name is Esther Gelman. I am here speaking as an individual who has followed many
21 aspects of the County government for many, many, many years, and this is the second
22 time I have ever testified since I left the Council in 1986. The first was for restoration of
23 \$17,000 to MobileMed. They were going to be cut out of the budget. This raised such
24 alarms. I mean, bells went off in my head when I saw this. The--I understand the intent of
25 the bill. However, I think what you've done is increased the probability of it being--of more
26 badgering. Now, any attorney--and I also understand one attorney caused this. Now, your
27 staff should all have a list of filed zonings. And when somebody comes in, nobody has the
28 right to badger. You say, "Excuse me, I can't speak to you about this. I'm not going to
29 relay your message, so we're done." And I had only 2 times in my entire career--the
30 Planning Board and the Council-- where somebody overstepped the boundary, and I won't
31 take time to tell you unless you want to hear. Now, I think this bill will accentuate the
32 problem. The--the problem with the bill today is that there's no teeth in the law. If the
33 person who violated the ex parte, for whom this bill is written--one attorney, I understand--
34 what was the penalty? I understand it's in the record, but who cares? Why wasn't it
35 reported to the Ethics Commission of the Bar Association and to the County Ethics
36 Commission? That has teeth. So put in a penalty and stop with the extending the
37 probability. Now, a too-persistent citizen should also be sent to the County Planning--
38 Ethics Commission. I've heard citizens say the law is only for developers and their
39 lawyers. It's a little equal. The other--the other problem I have is that the bill treats the
40 Planning Commission as an outside force. Now, none of you were around when we

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1 worked for years and years to bring the planning under the Council. It was a struggle
2 because I don't think there's anyplace else in the country that does it. It is probably the
3 foremost reason, besides the honorable people we elect, that we do not have corruption.
4 You don't ever read about it. You don't hear about it. This is your Planning Commission.
5 You make the appointments. You set the work program. How can you deny them access?
6 They are your staff, and if you don't use them that way, it's your loss. Now, none of that
7 happened overnight, believe me. When I went to the Planning Commission in June of
8 1970, master plans were drawn behind locked doors and unveiled. The current Planning
9 Commission is the finest one we have had in years, and you should not ignore them.
10 Now--

11
12 COUNCIL PRESIDENT ANDREWS:

13 You can take a few more seconds. The light was malfunctioning, so just keep going.
14

15 ESTHER GELMAN:

16 OK. I just have one more thing to say. The very idea of forbidding speech on the basis of
17 a probable filing is an affront to the First Amendment. Since I'm not an attorney, I checked
18 with a couple of Constitutional scholars who said, "Call in the ACLU. They'll go crazy over
19 this." Well, we don't need the national publicity and we don't need all that. We need to
20 have reason prevail. I did not call the ACLU. I was assured that if this were ever contested
21 in court, it would be knocked down like a feather. So have reason prevail. Put some teeth
22 in your law. Don't extend it unless you all want to enter a cone of silence for 4 years.
23

24 COUNCIL PRESIDENT ANDREWS:

25 Thank you very much for your testimony. It's good to see you again. It brings back--it does
26 bring back memories of "Get Smart." All right, our next speaker will be William Kominers.
27

28 WILLIAM KOMINERS:

29 Good afternoon, President Andrews, members of the Council. My name is William
30 Kominers. I'm an attorney in Bethesda here testifying as an individual on this bill. When I
31 read the bill, I had a little bit of a feeling--if it's not broken, don't fix it. I'm not familiar with
32 the situation that Ms. Gelman notes, but I do have some concerns over the interpretation
33 of the requirements of the bill and some of the uncertainties about how it operates. The
34 critical issue to me is the concept of "reasonably foreseeable." This bill restricts
35 communications with the decision makers, such as all of you, on any matter that is subject
36 to a future on-the-record proceeding if that proceeding is reasonably foreseeable. I just
37 don't know when that is or when that occurs, so I don't know when I can talk to you and
38 when I can't. The bill has no guidance about how far in advance is long enough to not be
39 reasonably foreseeable. I think there's a risk that--and that you guys do yourselves a
40 disservice with vague restrictions on communication before an application is filed. At

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1 present, the ex parte contacts are limited based upon whether or not an actual application
2 has been filed. That's a very clear and bright line about whether communication is allowed
3 or not. This blurs that line. In theory, the moment someone inquires at me about the use of
4 a property that could require a rezoning, is that application considered reasonably
5 foreseeable? It seems to be an overly broad restriction that is fraught with subjective
6 retrospective analysis. At that point that someone comes and asks me, in theory, I would
7 know too much, so I can't discuss it with them. The result is that if I know anything, I can't
8 speak with you. I can only speak with you if I know nothing. That's probably not the most
9 productive. I have met with Councilmembers before filing a new rezoning application. I've
10 gotten a sense of whether the proposal made sense, whether it seemed beneficial, how it
11 related to the master plan. I've gotten suggestions of particular community groups to go to
12 for outreach, but as written, this provision precludes speaking with you on this issues or
13 speaking to your staff. I think it also has problems for you. If I hold a meeting with a
14 community group before filing an application, your staff can't come to that. You can't come
15 to that. I understand why you can't come to it, but your staff can't even come to it. The
16 restrictions apply to everybody, as they do today. Citizens, community groups can't
17 contact Councilmembers or staff or vice versa in advance of a filing. So if somebody--if
18 there's a discussion going on in the community, perhaps because of a meeting I've held,
19 somebody can't call one of your staff members and say, "Do you know anything about
20 this? What's going on? What is it?" Now, they should at that point say, "Well, I can't talk
21 about it even if I know anything," but I just don't think that's beneficial, but in summary,
22 there's really no ready understanding of how much in advance of a filing is considered
23 reasonably foreseeable so as to preclude discussion. Right now, if something is filed you
24 can't, and if something is not filed you can, but that boundary disappears with this bill.
25 There's some restrictions in my written testimony about intra-government communication.
26 It's a little hard for me to see which agency can talk to whom with this. Can the Planning
27 Board staff talk to your staff? Can the Planning Board staff or your staff talk to the Board
28 of Appeals staff? It's not really clear with this, and I think you need to deal with that.
29 Similarly, the question of independent investigations. Obviously, you can't go out and do a
30 drive-by for a zoning case. But do you have to cleanse your mind of having driven through
31 an intersection for "X" number of years as a part of making your decision in order to make
32 that on the record? I think there are problems with this. I think that you should reject it
33 entirely or defer it substantially so as to allow people who are involved in this area to work
34 with your staff to try and clarify whatever needs to be clarified without being overly broad
35 and overly restrictive. Thank you.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Thank you for your testimony. Councilmember Leventhal has a question or comment.

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1 COUNCILMEMBER LEVENTHAL:

2 Bill, we're only talking about development plan amendments and local map amendments.
3 Have you really had frequent conversation prior to the filing of the application to scope out
4 whether a particular local map amendment is going to fly? I've been here 7 years and, you
5 know, this has applied to so few of these cases. I don't see how it's going to restrict your
6 advocacy all that much.

7
8 WILLIAM KOMINERS:

9 Well, it's pretty restrictive. You're right--normally you don't, but there are some times--
10 particularly to get a sense of who in the community to talk to, what issues are there,
11 sometimes it's to make sure that someone is aware just when a call is going to come in to
12 someone subsequent to filing. So it's not that frequent. This would apply to the Board of
13 Appeals, Board of Appeals actions, anything else that's on the record. Sectional map
14 amendments, district map amendments--all of those are on the record.

15
16 COUNCILMEMBER LEVENTHAL:

17 Any local map amendment or any--

18
19 WILLIAM KOMINERS:

20 Or any sectional map amendment. Or a special-exception proceeding. Or any of the other
21 actions--

22
23 COUNCILMEMBER LEVENTHAL:

24 Do you have frequent contact with Councilmembers?

25
26 WILLIAM KOMINERS:

27 No, no, no. I was speaking about zoning cases.

28
29 COUNCILMEMBER LEVENTHAL:

30 You may have been meeting with other Councilmembers. You haven't met with me.

31
32 COUNCIL PRESIDENT ANDREWS:

33 Thank you, Councilmember Leventhal. There are no other questions at this point, so the
34 public hearing is concluded. Thank you very much for your thoughts, and we welcome
35 other testimony from people, and that should be received by June 5. Thank you all. Our
36 next public hearing will be on Bill 13-09, a Consumer Protection Advisory Committee that
37 would modify the membership of the Advisory Committee on Consumer Protection and
38 generally amend the law related to consumer protection. Persons wishing to submit
39 additional material for the Council's consideration should do so before close of business
40 Friday, June 5, 2009. A Public Safety Committee work session is tentatively scheduled for



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1 Thursday, June 25, 2009, at 9:30, and we have one speaker signed up for this bill, and
2 that is Evan Johnson representing the County Executive. Good afternoon.

3
4 EVAN JOHNSON:

5 Good afternoon. I'm Evan Johnson, administrator for the Office of Consumer Protection.
6 Thank you for the opportunity to testify on behalf of the County Executive on Bill 13-09,
7 which deals with requirements to be a business member of the Advisory Committee on
8 consumer protection. Section 11-3A of the County Code currently specifies that at least 2
9 members of the 9-member Committee be members of the Better Business Bureau or
10 another Countywide association of merchants such as the Montgomery County Chamber
11 of Commerce. Bill 13-09 stipulates that business members of the Advisory Committee
12 may be members of a local chamber of commerce or another local association of
13 merchants and do not necessarily have to be members of a Countywide association of
14 merchants. The effect of Bill 13-09 is to somewhat broaden the definition of business
15 members in the Advisory Committee while still ensuring that these members have the
16 background to represent the interest of business in Montgomery County, and we will work
17 with the local chambers when it is time to recruit for these positions. I'd be happy to
18 answer any questions you might have.

19
20 COUNCIL PRESIDENT ANDREWS:

21 Thank you very much. I don't see any questions about this. So the hearing is concluded,
22 and we'll move on to the next one. Thank you very much. Our next public hearing is on a
23 supplemental appropriation to the County Government's FY09 operating budget for
24 Montgomery County Board of Elections, \$2,153,000 for relocation costs. Action is
25 scheduled immediately following this hearing. There are no speakers for the hearing, and
26 so the hearing is closed, and the MFP Committee has recommended approval of this
27 supplemental appropriation. Are there any questions or comments? There are none? OK.
28 OK. All right. Then all those in favor of the supplemental appropriation, please raise your
29 hand. That is Councilmember Elrich, myself, Council Vice President Berliner,
30 Councilmember Knapp, and Councilmember Leventhal. It is approved 5-0. Our final--
31 yeah. Our--who's that? Councilmember Trachtenberg, we just voted on the supplemental
32 appropriation for the Board of Elections.

33
34 COUNCILMEMBER TRACHTENBERG:

35 Yes. And obviously I support it as proposed and as recommended by MFP.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Very good. Thank you, and I've relayed the MFP recommendation, as well. OK, our final
39 public hearing this afternoon is on a supplemental appropriation to the County
40 Government's FY09 operating budget for the Department of Housing and Community

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1 Affairs, \$2,073,965 for the Neighborhood Stabilization Program. Action is scheduled
2 immediately following this hearing. There are no speakers for the hearing, so the hearing
3 is closed, and I'll turn to the Chair of the PHED Committee for their recommendation.

4
5 COUNCILMEMBER KNAPP:

6 As many of us know, we've all been kind of waiting to see where the stimulus money
7 comes in and how we can best utilize it, and one of the largest chunks to come in, at least
8 initially, has been this money to the Department of Housing and Community Affairs of
9 \$2.07 million, and so given the conversation that many of my colleagues participated in
10 yesterday in the PHED and HHS Committees as it related to the need for additional
11 housing assets and resources, this is a welcomed addition, and so this was a unanimous
12 recommendation from the PHED Committee.

13
14 COUNCIL PRESIDENT ANDREWS:

15 Thank you, Councilmember Knapp, Chair of the PHED Committee. Are there any
16 questions or comments about the appropriation before we vote? Seeing none. All those in
17 favor of the supplemental appropriation of \$2,073,965 for the operating budget of the
18 Montgomery County Government Housing and Community Affairs Neighborhood
19 Stabilization Program, source, federal funds, please raise your hand. That is
20 Councilmember Elrich, Councilmember Trachtenberg, myself, Council Vice President
21 Berliner, Councilmember Knapp, and Councilmember Leventhal. It is approved 6-0, and
22 that concluded the Council's action today. There will be a joint meeting of the
23 Management Fiscal Policy/Health and Human Services Committee at 2:00 upstairs on the
24 seventh floor. Thanks, everybody.